

Message Text

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TO USMISSION OECD PARIS

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E.O. 11652: N/A

TAGS: OECD, IEA, ENERGY

SUBJECT: IEA:ALLOCATION SYSTEM TEST

1. PLEASE PASS THE FOLLOWING GUIDELINES FOR RECORD-KEEPING BY U.S. COMPANIES PARTICIPATING IN THE IEA ALLOCATION SYSTEM TEST TO DIETER KEMPERMANN, IEA SECRETARIAT. INFORM KEMPERMANN THAT THESE GUIDELINES REFLECT REVISIONS MADE IN THE WAKE OF THE MOST RECENT IAB MEETING. THEY NOW HAVE BEEN FORWARDED TO THE ATTORNEY GENERAL FOR APPROVAL. THEY HAVE BEEN AGREED AT THE STAFF LEVEL IN STATE, FEA, JUSTICE, FTC BUT COULD BE MODIFIED PRIOR TO APPROVAL BY ATTORNEY GENERAL.

2. BEGIN TEXT. THE FOLLOWING GUIDELINES APPLY EXISTING
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U.S. RECORD-KEEPING REQUIREMENTS TO THE FALL, 1976 TEST.
THEY APPLY ONLY TO U.S. REPORTING COMPANIES AND TO U.S.

WILL BE CONDUCTING THE TEST IN PARIS.

I. U.S. MEMBERS OF THE INDUSTRY SUPPLY ADVISORY GROUP.

A. GENERAL: 1. THE TEST WILL BE CONDUCTED IN THE FORMAT OF A SINGLE MEETING OF SUBCOMMITTEE A. IT WILL REQUIRE ONLY A SINGLE NOTICE OF MEETING IN ADVANCE, WITH THE CONDUCT OF THE TEST LISTED AS THE AGENDA. THE TEST WILL CONSIST OF A SERIES OF GROUP SESSIONS, TELEPHONE AND PERSONAL COMMUNICATIONS AMONG THE ISAG MEMBERS, WORK BY ISAG MEMBERS IN THEIR INDIVIDUAL OFFICES, AND TELEX AND TELEPHONE COMMUNICATIONS WITH REPORTING COMPANIES.

2. A VERBATIM TRANSCRIPT IS IMPRACTICABLE FOR THIS MEETING. INSTEAD, U.S. GOVERNMENT EMPLOYEES WILL BE RESPONSIBLE FOR KEEPING A FULL AND COMPLETE RECORD OF EACH INDIVIDUAL GROUP SESSION. AN ADEQUATE MONITORING OF PROCEEDINGS TO MAKE THIS RECORD REQUIRES THAT THE TEST PROCEEDINGS BE LIMITED WHERE POSSIBLE GEOGRAPHICALLY TO THE ASSIGNED OFFICES AND CONFERENCE ROOMS. THIS RECORD MAY BE MADE AVAILABLE DURING THE TEST TO THE ISAG MEMBERS FOR INSPECTION AS TO ITS ACCURACY. NO OTHER DISTRIBUTION OUTSIDE THE U.S. GOVERNMENT IS CONTEMPLATED.

3. RECORDS MADE BY THE U.S. GOVERNMENT WILL BE KEPT CONFIDENTIAL TO THE EXTENT PROVIDED IN EXISTING REGULATIONS. NOT ALL ISAG WORK WILL BE DONE IN MONITORED SESSIONS; THE RECORD OF GROUP SESSIONS WILL BE SUPPLEMENTED BY RECORDS OF "COMMUNICATIONS" PREPARED BY U.S. COMPANY PARTICIPANTS FOR CONTACTS OR DISCUSSIONS WHERE A U.S. GOVERNMENT EMPLOYEE IS NOT PRESENT.

B. GROUP SESSIONS: 1. AS MUCH WORK AS POSSIBLE SHOULD BE SCHEDULED IN A "MEETING" FORMAT. THIS COULD INCLUDE REGULAR DAILY SESSIONS OF THE WHOLE ISAG GROUP, AS WELL AS SMALLER WORKING SESSIONS OF TWO OR MORE PARTICIPANTS. ALL SESSIONS ATTENDED BY ANY U.S. COMPANY ISAG MEMBER MUST TAKE PLACE IN THE PRESENCE OF A U.S. GOVERNMENT EMPLOYEE AND, UNLESS OTHERWISE AUTHORIZED BY A U.S. LIMITED OFFICIAL USE
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GOVERNMENT EMPLOYEE, MUST BE HELD IN A CONFERENCE ROOM OR OTHER DESIGNATED AREAS. MORE THAN ONE SESSION MAY BE HELD SIMULTANEOUSLY.

2. A U.S. GOVERNMENT EMPLOYEE WILL BE RESPONSIBLE FOR KEEPING A "FULL AND COMPLETE" WRITTEN RECORD OF EACH SESSION. THE RECORD WILL BE SUPPLEMENTED, AS NECESSARY FOR ANTITRUST MONITORING, WITH COPIES OF DOCUMENTS DISCUSSED AT THE SESSION. THE GOVERNMENT EMPLOYEE'S WRITTEN NOTES MAY BE SUPPLEMENTED BY TAPE RECORDINGS MADE BY THE EMPLOYEE FOR HIS OWN USE IN PREPARING THE RECORD.

C. COMMUNICATIONS OF U.S. ISAG MEMBERS: 1. ONLY COMMUNICATIONS (OUTSIDE OF MEETINGS) WHICH ARE IN SOME WAY COVERED UNDER AN ADEQUATE FORM OF RECORDATION ARE ELIGIBLE FOR PROTECTION UNDER THE ANTITRUST DEFENSE.

2. ALL RECORDS OF COMMUNICATIONS SHOULD INCLUDE THE FOLLOWING ELEMENTS:

(A) ALL COMMUNICATIONS SHOULD BE RECORDED IN TERMS OF DATE, APPROXIMATE TIME, OTHER PARTIES, AND SUBJECT MATTERS IN SUFFICIENT DETAIL TO IDENTIFY THE SPECIFIC TRANSACTIONS OR INFORMATION DISCUSSED. WHERE APPROPRIATE THE RECORD SHOULD IDENTIFY THE PROBLEM INVOLVED AND ANY CONCLUSIONS OR RECOMMENDATIONS REACHED.

(B) WHERE INFORMATION OF A PROPRIETARY OR CONFIDENTIAL NATURE IS INCLUDED IN A COMMUNICATION, THIS SHOULD BE NOTED BUT THE PRECISE DATA OR INFORMATION CONVEYED NEED NOT BE SET OUT IN THE RECORD SO LONG AS THERE IS A SUFFICIENT NOTATION OF ITS NATURE TO IDENTIFY IT WITH AN INFORMATION CATEGORY INCLUDED IN THE LIST OF TYPES OF EXCHANGES WHICH WILL HAVE BEEN PREVIOUSLY APPROVED BY THE ADMINISTRATOR AND THE ATTORNEY GENERAL.

3. SOME EFFORT SHOULD BE MADE TO EXPERIMENT WITH DIFFERENT FORMS OF RECORD-KEEPING DURING THE TEST AND TO DEVELOP FOR FUTURE USE STANDARD FORMATS. THIS COULD BE LIMITED OFFICIAL USE
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DONE BY HAVING EACH U.S. COMPANY ISAG MEMBER CHOOSE HIS OWN METHOD TO BE FOLLOWED THROUGHOUT THE TEST. ALTERNATIVELY, THE GROUP AS A WHOLE COULD FOLLOW A DIFFERENT METHOD FOR EACH CYCLE OF THE TEST. THE FOLLOWING ARE SUGGESTIONS FOR VARIOUS METHODS:

(A) EACH INDIVIDUAL COMMUNICATION BE RECORDED SEPARATELY.

(B) RECORDING MULTIPLE DISCUSSIONS ON THE SAME SUBJECT DURING ONE DAY BY MAKING A FULL NOTATION ON THE OCCASION OF THE INITIAL DISCUSSION WITH SUBSEQUENT DISCUSSION ONLY NOTED AS TO FACT OF OCCURRENCE, AND ANY NEW CONTENT OR PARTIES.

(C) THE PREPARATION OF A SINGLE MEMORANDUM AT THE END OF THE DAY WHICH RECORDS IN SUMMARY FORM MULTIPLE DISCUSSIONS THAT OCCURRED DURING THAT DAY.

(D) RECORDING COMMUNICATIONS BY USING A STANDARD FORM OF DAILY TIME BOOK TO RECORD THE TIME, PARTIES TO, AND SUBJECT MATTERS OF COMMUNICATIONS, BOTH WITH ISAG AND

WITH OUTSIDE REPORTING COMPANIES. THIS BOOK WOULD THEN SERVE AS THE ENTIRE RECORD OF COMMUNICATIONS BY THE INDIVIDUAL PARTICIPANT.

4. WHILE PRESENCE OF A U.S. GOVERNMENT EMPLOYEE AT EACH EXCHANGE INVOLVING A U.S. COMPANY ISAG MEMBER IN THE TEST IS NOT REQUIRED, THE U.S. GOVERNMENT MONITORS SHOULD BE FREE TO BE PRESENT AT ANY CONVERSATION INVOLVING SUCH COMPANY PARTICIPANTS. TO PERMIT BETTER MONITORING THE U.S. GOVERNMENT REQUESTS THAT ALL COMMUNICATIONS AMONG U.S. COMPANY ISAG MEMBERS BE CONDUCTED, TO THE EXTENT PRACTICABLE, WITHIN THE OECD HEADQUARTERS OR OTHER DESIGNATED AREAS.

5. EXCHANGES TOTALLY IN THE PRESENCE OF A U.S. EMPLOYEE DURING WORKING SESSIONS WILL BE TREATED AS EXCHANGES WITHIN A MEETING AND NO RECORD NEED BE PREPARED BY THE PARTICIPANTS. PARTICIPANTS ARE RESPONSIBLE FOR VERIFYING AT THE TIME OF EXCHANGE THAT SUCH EXCHANGES FALL WITHIN THE SCOPE OF THIS PARAGRAPH.

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6. A COPY OF EACH RECORD OF COMMUNICATIONS MADE BY A U.S. REPORTING COMPANY ISAG MEMBER SHOULD BE TURNED OVER TO A U.S. GOVERNMENT REPRESENTATIVE PROMPTLY AND IN NO CASE LATER THAN 3 DAYS AFTER THE COMMUNICATION. THESE DOCUMENTS WILL BE CONSIDERED AS SUPPLEMENTARY ANNEXES TO THE FULL AND COMPLETE RECORD OF THE OVERALL MEETING BEING COMPILED BY THE U.S. GOVERNMENT.

7. WHERE MORE THAN ONE U.S. REPORTING COMPANY IS INVOLVED THE PARTIES MAY DESIGNATE WHO SHALL SUPPLY SUCH RECORDS.

D. SUPPLEMENTAL RECORDS: 1. COPIES OF THE FOLLOWING WRITTEN DOCUMENTS SHOULD BE FURNISHED TO A U.S. GOVERNMENT REPRESENTATIVE PROMPTLY AND IN NO CASE LATER THAN 3 DAYS AFTER THE COMMUNICATION OR RECEIPT OF THE RECORD BY A U.S. COMPANY:

(A) RECORDS FURNISHED BY THE IEA TO U.S. COMPANY ISAG MEMBER TO BE USED IN BALANCING ALLOCATION RIGHTS AND OBLIGATIONS, INCLUDING THE INFORMATION FURNISHED IN STEP 1 OF THE ALLOCATION PROCEDURES. QUESTIONNAIRE "B'S" FILED BY FOREIGN GOVERNMENTS, QUESTIONNAIRE "A'S" OF NON-U.S. REPORTING COMPANIES, AND DERIVATIVE FORMATS CONTAINING SUCH DATA IN DISAGGREGATED FORM WILL NOT BE COLLECTED PURSUANT TO THIS PARAGRAPH UNLESS SUCH MATERIAL IS COMMUNICATED BEYOND ISAG TO U.S. REPORTING COMPANIES.

(B) ALL RECORDS FURNISHED BY OR ON BEHALF OF U.S. REPORTING COMPANIES TO THE IEA IN CONNECTION WITH BAL-

ANCING ALLOCATION RIGHTS AND OBLIGATIONS, INCLUDING THE REPORT TO THE IEA ALLOCATION COORDINATOR UNDER STEP 7 IN THE ALLOCATION PROCEDURES.

(C) TELEXES FROM ISAG TO U.S. REPORTING COMPANIES AND FROM U.S. REPORTING COMPANIES TO ISAG.

(D) WRITTEN LOGS OF TELEPHONE CALLS MAINTAINED BY U.S. COMPANY ISAG MEMBERS. THESE MUST BE MADE FOR OUTSIDE COMMUNICATIONS WITH U.S. REPORTING COMPANIES. THESE TELEPHONE LOGS SHOULD CONTAIN ALL THE ELEMENTS SET OUT IN LIMITED OFFICIAL USE
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I.C.2. TELEPHONE CALLS BETWEEN A U.S. COMPANY ISAG MEMBER AND HIS OWN COMPANY SHOULD BE TREATED AS "COMMUNICATIONS" AND REPORTED AS OTHER TELEPHONE CALLS WHEN SUCH CALLS DIRECTLY CONCERN CARRYING OUT ISAG ALLOCATION PROCEDURES.

2. ALTHOUGH COMMUNICATIONS WITH NON-U.S. REPORTING COMPANIES BY U.S. COMPANIES ARE NOT CURRENTLY REQUIRED TO BE REPORTED, IT WOULD BE USEFUL IN EVALUATING THE NEED FOR SUCH RECORDS TO HAVE APPROPRIATE VOLUNTARY SUBMISSIONS BY U.S. COMPANY ISAG MEMBERS.

3. WHERE MORE THAN ONE U.S. REPORTING COMPANY IS INVOLVED THE PARTIES MAY DESIGNATE WHO SHALL SUPPLY SUCH RECORDS.

II. U.S. REPORTING COMPANIES: 1. EXISTING RULES REQUIRE A REPORTING COMPANY TO MAINTAIN FOR FIVE YEARS INTRA-CORPORATE DOCUMENTS RELATING TO THE VOLUNTARY AGREEMENT. WITH RESPECT TO THE TEST, THIS IS EXPECTED TO INCLUDE TELEXES RECEIVED AND SENT, MEMORANDA CONCERNING INTER-COMPANY DISCUSSIONS OVER MOCK SALES OR EXCHANGES, DOCUMENTATION CONCERNING THE ACTIONS REQUIRED BY ISAG OR PROPOSED BY A REPORTING COMPANY, AND ANY OTHER INTRA-CORPORATE DOCUMENTS GENERATED BY THE TEST.

2. A REPORTING COMPANY IS ALSO REQUIRED TO MAKE A FULL AND COMPLETE RECORD OF ANY COMMUNICATION WITH OTHER U.S. REPORTING COMPANIES, INCLUDING TELEPHONE COMMUNICATIONS WITH U.S. COMPANY ISAG MEMBERS. ALTHOUGH NOT REQUIRED, U.S. COMPANIES ARE REQUESTED TO MAKE RECORDS OF COMMUNICATIONS WITH NON-U.S. REPORTING COMPANY AND THEIR ISAG MEMBERS. SUCH RECORDS SHOULD CONTAIN ALL THE ELEMENTS IN I.C.2. COMPANIES SHOULD SUBMIT COMMUNICATIONS WITH OTHER PARTICIPANTS DURING A TEST CYCLE WHICH ARE PART OF THE TEST (OR CONCERNED WITH ITS OPERATION) TO FEA IN THE FORMS OF ANNEXES TO THE REPORT OF ACTIONS, REQUESTED IN II.4, TAKEN DURING A PARTICULAR TEST CYCLE. WHEN MORE THAN ONE U.S. REPORTING COMPANY IS INVOLVED, THE PARTIES

MAY DESIGNATE WHO SHALL SUPPLY SUCH RECORDS.

3. THOUGH NOT PRESENTLY REQUIRED, EACH REPORTING COMPANY
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IS REQUESTED TO MAINTAIN COPIES OF ALL TEST RECORDS SET
FORTH IN (1) AND (2) SEPARATELY IN AN APPROPRIATE COMPANY
OFFICE. THESE RECORDS MAY BE SUBJECT TO LATER U.S.
GOVERNMENT INSPECTION FOR THE PURPOSE OF DEVELOPING MORE
SPECIFIC DEPARTMENT OF JUSTICE REGULATIONS WITH REGARD
TO RECORD-KEEPING.

4. A REPORT TO THE U.S. GOVERNMENT BY REPORTING COMPANIES
OF ACTIONS TAKEN PURSUANT TO A PLAN OF ACTION IS PRESENTLY
REQUIRED ONLY DURING AN ACTUAL EMERGENCY. INCORPORATING
SUCH REPORTS AS AN ADDITIONAL ELEMENT IN THE ALLOCATION
SYSTEMS TEST WOULD BE HIGHLY DESIRABLE IN ORDER TO TEST
A REPORTING COMPANY'S ABILITY TO COMPILE REQUIRED REPORTS
IN TIMELY FASHION, TO TEST THE GOVERNMENT'S MONITORING
CAPABILITY IN PROCESSING REPORTS, AND TO GUIDE THE GOVERN-
MENT IN PRESCRIBING SUITABLE FORMATS FOR THESE REPORTS.
THEREFORE, EACH REPORTING COMPANY IS REQUESTED TO MAKE
REPORTS OF ACTIONS TAKEN AS PART OF THE TEST IN THE
FOLLOWING FASHION:

(A) A REPORT SHOULD BE SUBMITTED WITHIN TWO WEEKS OF THE
END OF EACH TEST CYCLE.

(B) THE REPORT SHOULD BE TELEXED OR DELIVERED TO
ROSEANN MAZAKA, INTERNATIONAL ENERGY AFFAIRS, FEDERAL
ENERGY ADMINISTRATION, 2000 M STREET, N.W., WASHINGTON,
D.C. 20461. FEA WILL FORWARD THE REPORTS TO THE DEPART-
MENT OF JUSTICE.

(C) THE MANNER AND PARTICULAR CONTENT OF A REPORT IS LEFT
TO THE DISCRETION OF THE INDIVIDUAL REPORTING COMPANY. IT
CAN BE SUBMITTED IN ANY FASHION A COMPANY BELIEVES WILL
BEST REFLECT WHAT IT HAS DONE. END TEXT. ROBINSON

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